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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 79

AMERICAN AIRLINES, INC.,

Petitioner,

v.

JOSEPH V. MANNING, as President of AMERICAN AIRLINES CHAPTER, FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION, AFL-CIO, and AMERICAN AIRLINES CHAPTER, FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION, AFL-CIO, an unincorporated association,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONDENTS' MEMORANDUM IN OPPOSITION

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 1105

AMERICAN AIRLINES, INC.,

Petitioner,

v.

JOSEPH V. MANNING, as President of AMERICAN AIRLINES CHAPTER, FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION, AFL-CIO, and AMERICAN AIRLINES CHAPTER, FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION, AFL-CIO, an unincorporated association,

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RESPONDENTS' MEMORANDUM IN OPPOSITION

This case is not the kind for review by this Court. The reasons Petitioner has advanced for granting the writ are plainly insubstantial. Respondents, therefore, state their opposition in memorandum form.

1.

This case was the second of two in which Respondents ("the Chapter") sought and obtained injunctive relief against Petitioner ("the Company"). In the first—a suit commenced by the Air Line Pilots Association ("ALPA")

for recognition as the pilots' bargaining representative—the Chapter, as intervenor, sought to compel the Company to bargain with it as the flight engineers' representative, initially with respect to the rates of pay, rules and working conditions covered by the parties' basic agreement. Soon thereafter, in this case, which was referred to the same District Judge, the Chapter sought the same relief with respect to the parties' separate check-off agreement; and since the Company had threatened to discontinue (and later discontinued) the check-off, despite the Chapter's having served a notice pursuant to Section 6 (45 U. S. C. §156) (App. 13c-14c*), the Chapter also sought injunctive relief against such discontinuance.

The District Court granted the Chapter's motion for preliminary injunction in the former case, but denied ALPA's motion, holding there was a substantial question as to the identity of the pilots' true representative—a question which the National Mediation Board had exclusive jurisdiction to determine. On ALPA's appeal, the Second Circuit affirmed, and this Court denied ALPA's petition for certiorari. *Ruby* v. *American Airlines, Inc.*, 227 F. Supp. 674 (S. D. N. Y.), *aff'd*, 323 F. 2d 248 (2d Cir. 1963), *cert. denied*, 376 U. S. 913 (1964).**

If there was no compelling reason to review the jurisdictional determination in the *Ruby* case, there would appear to be no compelling reason to review the jurisdictional de-

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* References to the Appendix to the Petition and to the Record Appendix are made in the manner used in the Petition (Pet. 2n).

** On the Company's separate appeal, which was consolidated for oral argument with its appeal in this case, the Second Circuit affirmed. *Ruby* v. *American Airlines, Inc.*, 329 F. 2d 11 (2d Cir. 1964). The petition for a rehearing *en banc* was denied on April 10, 1964.

termination by the same Court in this case—the principal reason the Company advances for granting the writ.

2.

The Company contends that the Second Circuit's jurisdictional decision—that the Adjustment Board did not have exclusive juridiction—is in "direct" conflict with decisions in other Circuits and in this Court (Pet. 7). The contention is grossly misconceived. There is neither a direct conflict, nor a conflict in principle. For in *every* case the Company cites to support its contention, there was an *existing* agreement (or, in one instance, a dispute as to whether or not the agreement terminated). However, in this case, it is undisputed that the agreement terminated (Pet. 5). It follows, there is no agreement for the Adjustment Board to interpret or apply.

In other words, this case clearly presents a "major" dispute: the agreement has expired; the Chapter wants to negotiate a new one; the Chapter, therefore, served a Section 6 notice.*

The interpretation issue which the Company raises (Pet. 7-8), is specious, not to say spurious, for the Chapter does not contend that it is the expired check-off agreement which requires the Company to continue checking-off. Rather, the Chapter contends that Section 6 so requires—that as a matter of law, not contract, the Company must maintain the status quo until the statutory settlement procedures, initiated by the Section 6 notice, are exhausted.

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* The distinction between "major" and "minor" disputes was first spelled out in *Elgin, J. & E. Ry.* v. *Burley*, 325 U. S. 711, 723 (1945).

It is true that the Court of Appeals, like the District Court, did not think the parties had intended by their check-off agreement to take themselves out from under the status-quo requirements of the Railway Labor Act. The Company continues to contend the parties did so intend.* But what the Court of Appeals, like the District Court, *held* was that, "regardless of the parties' intentions," they remain subject to Section 6 (App. 4c; R. 17a-18a).

3.

If the issue on the merits is one "of first impression" (Pet. 11), it is not troublesome. It did not trouble the District Court or the Court of Appeals, and there is no reason to suppose it will trouble other courts.

Neither of the Courts below had difficulty deciding that an agreement to dispense with the status-quo provisions of Section 6, if valid, would be at variance with the dispute-settlement scheme of the Railway Labor Act and would thus contribute more to instability than stability in labor relations (App. 4c; R. 17a-18a). For the logical consequence of the Company's contention is that hereafter any union, as well as any carrier, for whatever reasons it finds adequate or appealing, could wield its bargaining power to negotiate a like agreement and thereby rid itself of the restraints long required by the Railway Labor Act in the interest of industrial peace in interstate transportation:

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* The allegations in the third paragraph of the Company's statement of the case (Pet. 4) are not among the District Court's findings of fact, but constitute an argument only. For a statement of the case, this Court is respectfully referred to the opinions of the Court of Appeals and the District Court (App. 2c; R. 8a-9a).

> . . . The purpose of §6 was to prevent rocking of the boat by either side until the procedures of the Railway Labor Act were exhausted. . . . (App. 5c)
>
> . . . In this instance, if defendant [Company] were now free to use the self-help of stopping the dues check-off, the union would seem equally free to strike over the issue. Congress meant a negotiating, cooling and mediating period to intervene before such confrontations. (R. 16a)

The disastrous consequence of the Company's contention probably goes far to explain why the issue is one of first impression.

4.

This Court should not be called on to construe private agreements. Yet, the Company invites comparison between the duration clauses in the basic and check-off agreements (Pet. 13-14) and, citing Section 2 Seventh (45 U. S. C. §152 Seventh) (App. 10c), contends that the expiration date of the *check-off* agreement is a "working condition" which is "embodied" therein, so that the Company could discontinue the check-off on the agreed expiration date without regard for Section 6.

Obviously, however, there is "embodied" even in the basic agreement an expiration date, to take effect on the service of a Section 6 notice. The parties exchanged Section 6 notices affecting the basic agreement. Thus, *both* the basic and check-off agreements have now expired, *as provided for in their respective duration clauses.* The Company agrees it must maintain the working conditions covered by the basic agreement (App. 4c), but contends that it need not continue the check-off because expiration was "embodied" only in the check-off agreement!

Furthermore, the contention that Section 2 Seventh provides for an absolute alternative to Section 6 is also specious. Rather, Section 2 Seventh does no more than permit the parties to agree that the carrier may make given changes under given circumstances *during the life of the agreement*. That Section hardly relieves the carrier of an obligation fundamental to the statutory scheme from its original enactment—to maintain the status quo when Section 6 notices are served with a view toward negotiating changes to take effect *upon expiration of the agreement.**

5.

There is no substance whatever in the Company's contention that the "numerous fixed-term" or "side" agreements between air carriers and their employees—agreements which, in the language of the Second Circuit, cover "unusual situations of short duration" (App. 4c)—are "directly affected" by the decision below (Pet. 14). Such apparently are the very agreements which Section 2 Seventh contemplates. In any event, the Second Circuit expressly left the question open (App. 4c), since the question was not before the Court.

It is altogether apparent from the examples set forth in the Petition (Pet. 15) that the subject of check-off is hardly a "special circumstance," but, rather, like wages, a man-

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* Section 2 Seventh, in its present form, was enacted with the 1934 amendments, which introduced "no new principle into the existing law at all. There is nothing new introduced so far as elementary principles are concerned, into the existing law." H. R. Rep. No. 9861, 73d Cong., 2d Sess. 10 (1934). The agency which administers the Act agrees. NMB, *Administration of the Railway Labor Act by the National Mediation Board, 1934-1957* 85-86 (1958).

datory subject of collective bargaining in agreement after agreement. The parties could as well have printed the wage sections of the basic agreement as a separate or "side" agreement on wages, with a separate duration clause like the one in the separate check-off agreement. Would the Company, in the face of a Section 6 notice, have then been free to change wages upon the expiration of such a "side" agreement?

For the foregoing reasons, it is respectfully submitted that the petition should be denied.

Dated: New York, New York,
June 10, 1964.

Respectfully submitted,

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Attorney for Respondents.

WALTER N. KAUFMAN,
Of Counsel.